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Attorneys for Verde Energy USA, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JULIAN SANDERS,

Plaintiff,

VERDE ENERGY,

Defendant.

Civil Case No.: 2:17-cv-02925-MCA-LDW

Hon. Leda Dunn Wettre

JOINT DISCOVERY PLAN

1. Set forth a factual description of the case. Include the causes of action and affirmative defenses asserted.

By Plaintiff:

Plaintiff alleges that Defendant violated the Telephone Consumer Protection Act (“TCPA”) by making automatically dialed telephone calls to his cellular telephone without consent. Beginning in or about January of 2016 and continuing through in or about March of 2016, Plaintiff received automatically dialed telemarketing calls from Defendant. Plaintiff believes the calls were autodialed because there would be a noticeable delay before speaking to a representative. Plaintiff does not believe that there was prior express consent for such calls, but Plaintiff requested that the calls cease in or about January of 2016. Because Plaintiff requested that calls cease, Plaintiff would have effectively revoke any prior express consent (if any had existed). Plaintiff therefore seeks statutory damages of \$500 to \$1,500 per violative call under the TCPA.

By Defendant:

Defendant denies that it violated the TCPA, and denies that the Plaintiff’s claims are valid. Defendant maintains that Plaintiff granted prior express consent to receiving calls on January 31, 2016, and did not revoke his consent. Defendant denies that any calls were made with an automatic telephone dialing system (“ATDS”), as statutorily defined, and denies that Plaintiff sustained an injury-in-fact sufficient to confer constitutional standing. Defendant intends to file a Motion to Stay this action pending

a decision by the United States Court of Appeals for the District of Columbia Circuit in ACA Int'l v. Fed Commcn's Comm., No. 15-cv-01211 (D.C. Cir. 2015) ("ACA").

2. Have settlement discussions taken place? Yes X No _____.

If so, when?

The parties are currently engaged in settlement discussions and will provide the Court with additional information at the status conference scheduled in this matter for February 5, 2018.

3. The parties **have** exchanged the information required by Fed. R. Civ. P. 26(a)(1).
4. Describe any discovery conducted other than the above disclosures.

None.

5. Generally, dispositive Motions cannot be filed until the completion of discovery. Describe any Motions any party may seek to make prior to the completion of discovery. Include any jurisdictional Motions and Motions to Amend. **Defendants may seek to make a dispositive motion depending on the outcome of the ACA Case prior to the completion of discovery.**

6. The parties proposed the following:

- (a) Discovery is need on the following subjects:

Defendant's discovery will be directed primarily to Plaintiff's grant of prior express consent, the absence of a revocation of consent, the number of calls the Plaintiff received, and Plaintiff's alleged actual damages.

- (b) Should discovery be conducted in phases? If so, explain.

No

- (c) Number of Interrogatories by each party to each other party

25

- (d) Number of Depositions to be taken by each party

5

- (e) Plaintiff's expert report due on **July 31, 2018**

- (f) Defendant's expert report due on **September 14, 2018**

- (g) Motions to Amend or to Add Parties to be filed by **July 31, 2018**
 - (h) Dispositive motions to be served within **45** days of completion of discovery.
 - (i) Factual discovery to be completed by **July 31, 2018**
 - (j) Expert discovery to be completed by **October 31, 2018**
 - (k) Set forth any special discovery mechanism or procedure requested, including data preservation orders or protective orders: **Defendant will work with Plaintiff to agree to a mutually acceptable joint motion for protective order.**
 - (l) A pretrial conference may take place on **30 days following the Court's Order on any dispositive motions.**
 - (m) Trial by jury or non-jury Trial? **Jury**
 - (n) Trial date **TBD**
7. Do you anticipate any discovery problem? Yes _____ No **X**
8. Do you anticipate any special discovery needs (i.e. videotape/telephone depositions, problems with out-of-state witnesses or documents, etc.?)
Yes _____ No **X**
9. State whether this case is appropriate for voluntary arbitration (pursuant to L. Civ. R. 201.1 or otherwise), mediation (pursuant to L. Civ. R. 301.1 or otherwise), appointment of a special master or other special procedure. If not, explain why and state whether any such procedure may be appropriate at a later time (i.e., after exchange of pretrial disclosures, after completion of depositions, after disposition of dispositive motions, etc.).
10. Is this case appropriate for bifurcation? Yes _____ No **X**
11. We [do ____/do not **X**] consent to the trial being conducted by a Magistrate Judge.

Respectfully submitted,

KIMMEL & SILVERMAN, P.C.
Attorneys for Plaintiff

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Dated: January 31, 2018